IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2007

CORAM:-

THE HOB'BLE MR.JUSTICE R. REGUPATHI

CRL.O.P.No.13673 of 2006
and
Crl.M.P.No.3571 of 2006

Sureshkumar Metha ... Petitioner

vs

M/s Addison & Co Ltd.,
rep by its Power Agent
Smpath Kumar
No.803, Annasalai,
Chennai-600 002. ... Respondent

Petition filed under Sec.482 Cr.P.C for a direction to call for the records of the complaint in C.C.No.3869/2005, pending on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai, and quash the same.

For petitioner : Mr.S. Sethuraman
For respondent : Mr.Venkatachalam for
M/s R. Subramaniyam Associates

O R D E R

The petitioner is the sole accused for the offence punishable under Section 138 of Negotiable Instruments Act pending in C.C.No.3869 of 2005 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai.

2. In a business transaction, for supply of metal cutting tools and machine tools, there was an outstanding for a sum of 1,27,983.02 payable to the complainant by the petitioner/accused. As part payment of the total liability, the petitioner is stated to have issued a cheque for a sum of Rs.50,000/-, bearing No:0763994, dated 15.6.2004, drawn on Bank of India, Adityapur Branch, Code 4503, Jamshedpur. The complainant/respondent is stated to have deposited the same into the Bank for collection on 25.11.2004 through Central Bank of India, Ballygunge, Kolkata, and since the cheque was returned with an endorsement "Exceeds Arrangement", private complaint has been filed.

3. The learned counsel for the petitioner submits that it is true that a cheque bearing No. 0763994 dated 15.6.2004 has been issued to the

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complainant. However, after dishonour, a Demand Draft bearing No.020120, dated 27.10.2004, has been issued to the complainant/respondent and an acknowledgement has also been received in this regard, wherein it has been stated as follows:

> "Received with thanks for a D/D (No.020120 Dt.27.10.2004) of Rs.50,000/- (Rupees fifty thousand only) on Kolkata service branch against your bounced cheque No.0763994 of Dt.15.6.2004. The above cheque we will send back to you through post or courier".

Pointing out the same, learned counsel for the petitioner also submits that the very same cheque has been redeposited again on 25.11.2004 and after dishonour, the present complaint has been filed. According to him, since the amount mentioned in the cheque has been paid by way of Demand Draft drawn on 27.10.2004, the offence punishable under Section 138 of Negotiable Instruments Act will not be attracted and the present complaint is not maintainable; therefore, he seeks to quash the proceedings.

4. Per contra, the learned counsel for the respondent/complainant submits that the outstanding amount is Rs.1,27,983.02 and though the cheque bearing No. 0763994, dated 15.6.2004, has been initially dishonoured and Rs.50,000/- has been paid by the petitioner/accused through Demand Draft No.020120, Dt.27.10.2004, still balance amount is due; that being so, the complainant/respondent is entitled to deposit the very same cheque for realisation of the balance amount and on that score, there is nothing wrong in re-depositing the cheque for realisation and since on such redeposit, the cheque has been dishonoured, the offence punishable under Sec.138 of Negotiable Instruments Act is made out and seeks for dismissal of the petition.

5. I have perused the materials available on record. The dispute revolves around issuance of the cheque bearing No. 0763994 dated 15.6.2004. Admittedly, the cheque has been deposited for collection and it has been dishonoured. After the first dishonour, Demand Draft No.020120, Dt.27.10.2004, has been issued by the petitioner to the complainant and an acknowledgement has also been received in this regard.

6. Under such circumstances, the liability arising from the instrument/cheque gets cleared on payment of the same amount through Demand Draft on a subsequent date. It is unfortunate that in the complaint, the respondent/complainant failed to mention about the first deposit, dishonour and also receipt of Rs.50,000/- on subsequent date. In para No.3 of the complaint, it is simply stated that the cheque dated 15.06.2004, bearing No.0763994, deposited for clearance on 25.11.2004, was returned by the Bank on 02.12.2004 and intentionally, there is no whisper about the subsequent payment of the amount mentioned in the instrument.

7. Thus, prima-facie it appears that the complainant has purposely suppressed in the complaint the receipt of Rs.50,000/- ie., the cheque amount, by way of demand draft. The self-undertaking given by the

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complainant in the acknowledgement after receiving the cheque amount through Demand Draft to the effect that they would send back the instrument and, contrary to such undertaking, their action in re-depositing the cheque would only depict the fraud played by them against the petitioner. Thus, it is clear that the respondent did not approach the court with clean hands. Further more, if a cheque is issued on account of a liability and when it is dishonoured, an offence is made out after issuance of notice to the accused and such amount is not paid within the time prescribed; and if the amount mentioned in the cheque is paid within the stipulated period, the offence under Sec.138 of Negotiable Instruments Act is not made out.

8. In the instant case, suppressing the vital facts as pointed out above, the present complaint has been filed, that too after depositing the same cheque for the second time. Since the amount mentioned in the cheque has been paid through Demand Draft, the liability has come to an end and that being so, the offence under Sec.138 of Negotiable Instruments Act will not be made out.

9. In such circumstances, I am of the considered view that the proceedings initiated by the complainant is an abuse of process of Court and they are liable to be quashed. Accordingly, this petition is allowed and the proceedings against the petitioner in C.C.No.3869/2005, pending on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai, are hereby quashed. Consequently, connected Crl.M.P is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sr

To
1. The XVIII Metropolitan Magistrate, Saidapet, Chennai.

2. -do- through the Chief Judicial Magistrate, Saidapet, Chennai.

+ 1 CC To Mr.S.Sethuraman, Advocate SR NO.64263

+ 1 CC To Mr.R.Subramaniyam, Advocate SR NO.64491

Crl.O.P.No.13673/2006

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